IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

WP(C).No. 29567 of 2005(T)

PETITIONER:

RAVEENDRAN NAIR, S/O.K.N.NARAYANA KURUP,
VRINDAVAN, PAYYANALLOOR P.O., PALAMEL,NOORANADU.

BY ADV. SRI.R.RAMADAS

RESPONDENTS:
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1. GOWRI AMMA,
VRINDAVAN, PAYYANALLOOR P.O., PALAMEL, NOORANADU.

2. RAJENDRAN NAIR, -DO- -DO-.

BY ADV. SRI.K.K.JAYARAJ NAMBIAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 29567/2005 T

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE APPLICATION IA NO. 98/2003 DT. 20/1/2003 BY THE R2.

EXT.P2. COPY OF THE REPLICATION FILED BY THE PETITIONER IN THE SUIT DURING MARCH 2003.

EXT.P3. COPY OF THE APPLICATION IA NO. 1351/2005 IN OS NO. 501/98 ON THE FILE OF THE MUNSIFF COURT, MAVELIKKARA.

EXT.P4. COPY OF THE ORDER DT. 16/08/2005 IN IA NO. 1351/05 IN OS NO. 501/98 ON THE FILE OF THE MUNSIFF COURT, MAVELIKKARA.

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PIUS C. KURIAKOSE,J.

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W.P.(C) No.29567 of 2005

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Dated: 10th July, 2007

JUDGMENT

Ext.P4 order by which an application for appointment of an Advocate Commissioner to prepare the report on the basis of a measurement of the properties in question was dismissed by the learned Munsiff is under challenge in this Writ Petition under Article 227 of the Constitution initiated by the plaintiff. Though the learned Munsiff has also observed that measurement of the properties is not necessary, the decision in Ext.P4 turns mainly on the reason of delay.

2. The observations of the court below notwithstanding, I think that identification of the property as claimed by the petitioner may be of some assistance to the court in resolving the issues. At the same time the learned Munsiff was certainly correct in observing that there was delay, though Mr.Ramadas would submit with all his persuasive proudness that the application itself became necessary only because of the amendment of the written statement which was allowed only very late.

3. Having considered the rival submissions addressed before me, I am of the view that I.A.No.1351/05 should have been allowed by the learned Munsiff by imposing terms on the petitioner. I set

aside Ext.P4 and allow I.A.No.1351/05 subject to the following conditions:

The petitioner pays a total amount of Rs.2000/- by way of cost, out of this Rs.1500/- will be paid by the petitioner to the respondents either directly or through their counsel appearing in this court or before the court below and a sum of Rs.500/- will be paid to the Kerala High Court Legal Services Committee within one month from today. If payments are not made as above, Ext.P4 will stand confirmed. Once payments are made and the order allowing I.A.No.1351/05 becomes operative, the learned Munsiff will appoint an able Advocate of his court as Commissioner to inspect and report on the various aspects mentioned in the commission application (Ext.P3). The remuneration payable to the Commissioner and the Surveyor will be fixed by the learned Munsiff.

The Writ Petition is disposed of as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**